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Attorney-Client Communications
Advisory Letter #14-07

Bernice A.N. Corley
General Counsel
Indiana Department of Education
115 W. Washington Street, Suite 600
Indianapolis, IN 46204

Dear Ms. Corley:

Recently you requested an advisory opinion from our office regarding the following question:

In light of Ind. Code § 20-19-2-14.5, can the Indiana Department of Education and/or the Indiana State Board of Education enter into an agreement with the World-Class Instructional Design and Assessment Consortium?

BRIEF ANSWERS

Based on the fact that membership in the cooperative does not require the state to cede any autonomy or control regarding education standards and assessments, the Indiana Department of Education and the Indiana State Board of Education would not be in violation of Indiana Code § 20-19-2-14.5 if either entered into an agreement with the World-Class Instructional Design and Assessment Consortium.

ANALYSIS

As a result of the 118th General Assembly, Ind. Code § 20-19-2-14.5 was added to the Indiana Code pursuant to House Enrolled Act No. 1427. Under Ind. Code § 20-19-2-14.5, the state, or a state board acting on behalf of the state, is prohibited from entering into or renewing an agreement with

any organization, entity, group, or consortium that requires the state to cede control or autonomy over educational standards and assessments. Specifically, subsection 14.5(i)¹ provided the following:

(i) This subsection does not apply to an agreement with the United States Department of Education concerning a waiver from federal requirements. After June 30, 2013, the state, or the state board on behalf of the state, may not enter into or renew an agreement with any organization, entity, group, or consortium that requires the state to cede any measure of autonomy or control of education standards and assessments, including cut scores.

According to one source, the purpose of House Enrolled Act No. 1427 was to “halt[] the implementation of new state standards known as the Common Core until the state holds public meetings to study whether they are rigorous standards that adequately prepare our students for future success.”² Section 14.5 includes a specific and multi-layered process requiring the Indiana Department of Education (the “Department”), the Indiana State Board of Education (the “Board”), the Office of Management and Budget, and other stakeholders to take certain steps to evaluate Indiana’s current standards, the common core standards, and other related considerations so that appropriate recommendations can be made and informed decisions reached regarding any corresponding policy changes.

In order to determine whether the Department or the Board may enter into an agreement with the World-Class Instructional Design and Assessment Consortium (“WIDA”), there must be an assessment regarding whether the agreement would require “the state to cede any measure of autonomy or control of education standards and assessments.” If the agreement between the state and WIDA would result in any measure of autonomy or control being forfeited by the state, Ind. Code § 20-19-2-14.5 dictates that the state must not entered into such covenant.

Although Indiana has not previously defined “autonomy” in statute or common law, the rules regarding statutory construction provide that words, if undefined, shall be taken in their plain and

¹ It should be noted that Ind. Code § 20-19-2-14.5 was amended significantly by Senate Enrolled Act 91 (Public Law 31-2014), which took effect on March 24, 2014. The amendments in SEA 91 resulted in former subsection 14.5(i) being recodified as subsection 14.5(e). However, no substantive changes were made to the language in former subsection 14.5(i), and the changes made by SEA 91 do not modify our conclusions in this advisory letter.

² Senate Republican Caucus, *Sen. Schneider: Senate Passes State Budget, Concludes 2013 Legislative Session* (April 27, 2013). It is also noteworthy that the heading for this statute includes “**Review of common core standards.**” The Office of the Attorney General (OAG) is aware that “[i]n interpreting statutes, we do not impute the opinions of one legislator, even a bill’s sponsor, to the entire legislature unless those views find statutory expression.” *A Woman’s Choice-East Side Women’s Clinic v. Newman*, 671 N.E.2d 104, 110 (Ind. 1996), citing *O’Laughlin v. Barton*, 582 N.E.2d 817, 821 (Ind. 1991). Also see *Utility Center, Inc. v. City of Fort Wayne*, 868 N.E.2d 453, 459 (Ind. 2007). In addition, “[d]escriptive headings of titles, articles, and chapters ‘are intended for organizational purposes only and are not intended to affect the meaning, application or construction of the statute they precede.’ I.C. § 1-1-1-5(f).” *Ind. Dep’t of Environmental Management v. Raybestos Products Company*, 897 N.E.2d 469 (Ind. 2008). The OAG is not suggesting that the comments of one legislator or the heading of the statute are dispositive in themselves. Our analysis is based on the context and content of the statute itself, but these additional observations tend to support the OAG’s conclusion.

ordinary meaning.³ Based on the 2013 Merriam-Webster's definition, the plain and ordinary meaning of "autonomy" is "the quality or state of being self-governing."⁴ The term "control" has been defined by common law to mean the "power or authority to manage, superintend, restrict, regulate, direct, govern, administer or oversee."⁵ In other words, the term "control," as it is used in Ind. Code § 20-19-2-14.5, relates to the state's ability to govern the overall management and policies of education standards and assessments. To enter into an agreement that would cede this ability to manage and oversee the state's education standards and assessments would be an action outside the Department and the Board's statutory authority.

Created in 2003 as a result of the No Child Left Behind Act, WIDA is a non-profit cooperative that seeks to advance academic language development and academic achievement for linguistically diverse students through high quality standards, assessments, research, and professional development for educators.⁶ Based on available information, WIDA does not require state members to adopt any particular standards or administer any specific assessments. If a state decides to become a member of the WIDA cooperative, it is provided with various tools and resources, including access to WIDA English Language Development (ELD) Standards, K-12 summative assessments, score reports, psychometric services, research databases and professional development opportunities.⁷ Although it is "highly recommended" that new member states adopt the WIDA ELD Standards, states may keep their prior standards as "companion documents."⁸ In order to join the WIDA cooperative a state is required to pay a fee that is determined on a price per student basis and includes printing, distributing, scoring, and reporting.⁹ Joining the cooperative also gives a participant access to online test administration training, face-to-face professional development days, research services, and Client Services Center support.¹⁰

After reviewing the available information regarding the membership requirements, it appears that entering into an agreement with the WIDA cooperative would not involve the relinquishment of any autonomy or control by the state with regard to education standards and assessments. While members may be "highly recommended" to utilize certain resources available through the consortium, the overall purpose of WIDA is to act as a resource center for state education systems. Based on this information, the Department and the Board would not appear to be in violation of Ind. Code § 20-19-2-14.5 if either entered into an agreement with the WIDA cooperative.

³ I.C. § 1-1-4-1.

⁴ AUTONOMY, Merriam-Webster (2013). *Accord: Green v. Obergfell*, 121 F.2d 46, 57 (D.C. Cir. 1941).

⁵ *Williams v. State*, 253 N.E.2d 242, 246 (1969).

⁶ World-Class Instructional Design and Assessment Consortium, *About Us*, <http://www.wida.us/aboutus/mission.aspx> (Last visited April 29, 2014).

⁷ World-Class Instructional Design and Assessment Consortium, *WIDA 2012 Annual Report*, pg. 6 (2012).

⁸ World-Class Instructional Design and Assessment Consortium, *WIDA Products and Services*, <http://www.wida.us/membership/products.aspx> (Last visited April 29, 2014).

⁹ World-Class Instructional Design and Assessment Consortium, *Helping States Meet Needs and Fulfill Requirements*, <http://www.wida.us/membership/helping.aspx> (Last visited April 29, 2014).

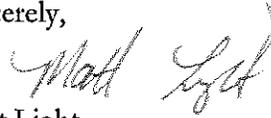
¹⁰ *Id.*

CONCLUSION

Given that the main purpose of the cooperative is to provide state educational systems with professional and academic resources, the state, through either the Department or the Board, may enter into an agreement with the WIDA cooperative. Available information does not indicate that the state would be required to cede any autonomy or control if it became a member of the WIDA consortium.

Please advise should you have any further questions regarding this analysis.

Sincerely,



Matt Light
Chief Counsel
Advisory & ADR Services Division